

ASSEMBLY BILL

No. 2556

Introduced by Assembly Members Chau and Lowenthal

February 21, 2014

An act to amend Sections 1796.38, 1796.45, 1796.47, 1796.48, 1796.49, 1796.61, and 1796.63 of the Health and Safety Code, relating to home care organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2556, as introduced, Chau. Home care organizations.

Existing law, the Home Care Services Consumer Protection Act, provides, on and after January 1, 2015, for the licensure and regulation of home care organizations by the State Department of Social Services and the registration of home care aides. Existing law creates the Home Care Fund to fund the administration of the act, which consists of all licensure and registration fees authorized by the act.

This bill would delay implementation of the this act until January 1, 2016.

Existing law requires that the department post proposed rules promulgated under the act on its Internet Web site no earlier than 10 calendar days prior to the effective date of the proposed rule.

This bill would require that the proposed rules be posted on the department's Internet Web site no later than 90 calendar days prior to the rule's effective date.

Existing law prohibits the cost to check criminal offender records from being used to subsidize the department checking the criminal history of other persons who are not charged a fee.

This bill would remove this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1796.38 of the Health and Safety Code
2 is amended to read:
3 1796.38. The department may issue a home care organization
4 license to an individual or other entity that satisfies all of the
5 requirements set forth in this chapter, including all of the following:
6 (a) Files a home care organization application, including the
7 fees required pursuant to Section 1796.49.
8 (b) Submits proof of general and professional liability insurance
9 in the amount of at least one million dollars (\$1,000,000) per
10 occurrence and three million dollars (\$3,000,000) in the aggregate.
11 (c) Submits proof of a valid workers' compensation policy
12 covering its affiliated home care aides. The proof shall consist of
13 the policy number, the effective and expiration dates of the policy,
14 and the name and address of the policy carrier.
15 (d) Provides the department, upon request, with a complete list
16 of its affiliated home care aides, and proof that each satisfies the
17 requirements of Section ~~1796.43~~. 1796.34.
18 (e) The owner or owners of the home care organization pass a
19 background examination, as required pursuant to Section 1796.34.
20 (f) The applicant does not have any outstanding fees or civil
21 penalties due to the department.
22 SEC. 2. Section 1796.45 of the Health and Safety Code is
23 amended to read:
24 1796.45. (a) An individual hired to be an affiliated home care
25 aide on or after January 1, ~~2015~~, 2016, shall ~~be submitted~~ submit
26 to an examination 90 days prior to employment or within seven
27 days after employment to determine that the individual is free of
28 active tuberculosis disease.
29 (b) For purposes of this section, "examination" means a test for
30 tuberculosis infection that is recommended by the federal Centers
31 for Disease Control and Prevention (CDC) and that is licensed by
32 the federal Food and Drug Administration (FDA) and, if that test
33 is positive, an X-ray of the lungs. The aide shall not work as an
34 affiliated home care aide unless he or she obtains documentation

1 from a licensed medical professional that there is no risk of
2 spreading the disease.

3 (c) An affiliated home care aide whose employment with a home
4 care organization began before January 1, ~~2015~~, 2016, shall submit
5 to the examination described in subdivision (a) before July 1, ~~2015~~.
6 2016.

7 (d) After submitting to an examination, an affiliated home care
8 aide whose test for tuberculosis infection is negative shall be
9 required to undergo an examination at least once every two years.
10 Once an affiliated home care aide has a documented positive test
11 for tuberculosis infection that has been followed by an X-ray, the
12 examination is no longer required.

13 (e) After the examination, an affiliated home care aide shall
14 submit, and the home care organization shall keep on file, a
15 certificate from the examining practitioner showing that the
16 affiliated home care aide was examined and found free from active
17 tuberculosis disease.

18 (f) The examination is a condition of initial and continuing
19 employment with the home care organization. The affiliated home
20 care aide shall pay the cost of the examination.

21 (g) An affiliated home care aide who transfers employment
22 from one home care organization to another shall be deemed to
23 meet the requirements of subdivision (a) or (c) if the affiliated
24 home care aide can produce a certificate showing that he or she
25 submitted to the examination within the past two years and was
26 found to be free of active tuberculosis disease, or if it is verified
27 by the home care organization previously employing him or her
28 that it has a certificate on file that contains that showing.

29 SEC. 3. Section 1796.47 of the Health and Safety Code is
30 amended to read:

31 1796.47. (a) (1) Administration of this program shall be fully
32 supported by fees and not civil penalties. Initial costs to implement
33 this chapter may be provided through a General Fund loan that is
34 to be repaid in accordance with a schedule provided by the
35 Department of Finance. The department shall assess fees for home
36 care organization licensure, and home care aide registration related
37 to activities authorized by this chapter. The department may adjust
38 fees as necessary to fully support the administration of this chapter.
39 Except for General Fund moneys that are otherwise transferred or
40 appropriated for the initial costs of administering this chapter, or

1 penalties collected pursuant to this chapter that are appropriated
2 by the Legislature for the purposes of this chapter, no General
3 Fund moneys shall be used for any purpose under this chapter.

4 (2) A portion of moneys collected in the administration of this
5 chapter, as designated by the department, may be used for
6 community outreach consistent with this chapter.

7 (b) The Home Care Fund is hereby created within the State
8 Treasury for the purpose of this chapter. All licensure and
9 registration fees authorized by this ~~chapter~~ *section* shall be
10 deposited into the Home Care Fund. Moneys in this fund shall,
11 upon appropriation by the Legislature, be made available to the
12 department for purposes of administering this chapter.

13 SEC. 4. Section 1796.48 of the Health and Safety Code is
14 amended to read:

15 1796.48. (a) The department may charge an application and
16 renewal fee to become a registered home care aide and to renew
17 a registered home care aide's registration.

18 (b) The maximum fee shall not exceed the total actual costs,
19 which include, but are not limited to, of all of the following:

20 (1) The searches for criminal offender records performed by
21 the Department of Justice. ~~The cost to check the criminal offender~~
22 ~~records shall not subsidize the cost to check the criminal history~~
23 ~~of other persons by the department who are not charged a fee by~~
24 ~~the Department of Justice.~~

25 (2) The cost incurred by the Department of Justice for the
26 searches of the records of the Federal Bureau of Investigation.

27 (3) The cost to the department to process the applications and
28 maintain the home care aide registry and perform the duties
29 required by this chapter and any rules and regulations promulgated
30 under this chapter.

31 (c) The fees collected shall be deposited into the Home Care
32 Fund pursuant to subdivision (b) of Section 1796.47, *with the*
33 *exception of fingerprint fees collected pursuant to Section 1796.23,*
34 *which shall be deposited into the Fingerprint Fees Account*
35 *described in Section 11105 of the Penal Code.*

36 SEC. 5. Section 1796.49 of the Health and Safety Code is
37 amended to read:

38 1796.49. (a) A home care organization licensee shall pay the
39 following fees:

1 (1) A 24-month initial license fee, as prescribed by the
2 department, for a new home care organization licensee not currently
3 licensed to provide home care services in the state.

4 (2) Two-year renewal fee, as determined by the department,
5 based on the number of full-time equivalents (FTEs), including
6 paid personnel or contractors needed to oversee the enforcement
7 of this chapter.

8 (3) Other reasonable fees as prescribed by the department
9 necessary for the administration of this chapter.

10 (b) The fees collected *pursuant to this section* shall be deposited
11 into the Home Care Fund pursuant to subdivision (b) of Section
12 1796.47.

13 SEC. 6. Section 1796.61 of the Health and Safety Code is
14 amended to read:

15 1796.61. This chapter shall become operative on January 1,
16 ~~2015~~ 2016.

17 SEC. 7. Section 1796.63 of the Health and Safety Code is
18 amended to read:

19 1796.63. The department shall adopt, amend, or repeal, in
20 accordance with Chapter 3.5 (commencing with Section 11340)
21 of the Government Code, any reasonable rules, regulations, and
22 standards as may be necessary or proper to carry out the purpose
23 and intent of this chapter and to enable the department to exercise
24 the powers and perform the duties conferred upon it by this chapter,
25 not inconsistent with any of the provisions of any statute of this
26 state. Notwithstanding the rulemaking provisions of the
27 Administrative Procedure Act (Chapter 3.5 (commencing with
28 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
29 Code), the department may implement and administer this chapter
30 through written directives, without taking regulatory action, subject
31 to the limitations provided in subdivision (b).

32 (a) The department shall post any proposed rules promulgated
33 under this section on its public Internet Web site no ~~earlier~~ later
34 than ~~40~~ 90 calendar days prior to the effective date of the proposed
35 rule, which shall also include notification to the public regarding
36 how members of the public may comment, including the date on
37 which those comment must be received in order to be considered
38 by the department.

39 (b) The department's authority to implement and administer
40 this section through written directives shall expire no later than 12

1 months after the written directives are promulgated and posted on
2 a public Internet Web site, or upon the effective date of regulations
3 promulgated in accordance with the Administrative Procedure Act
4 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
5 Division 3 of Title 2 of the Government Code), whichever occurs
6 sooner.

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